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IN THE

Supreme Court of the United States

October Term, 1968

No. 1174

UNITED STEELWORKERS OF AMERICA, AFL-CIO, *Petitioner,*

v.

HAMILTON STEEL PRODUCTS, INC., NATHAN YORKE, and THE UNION CENTRAL LIFE INSURANCE COMPANY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered in the above-captioned case on December 19, 1968.

OPINIONS BELOW

The district court did not issue an opinion. Its order dismissing the complaint is reprinted in the Appendix herein. The opinion of the Court of Appeals affirming the dismissal of the complaint is reported at 404 F.2d 878 and is reprinted in the Appendix herein.

JURISDICTION

The judgment of the Court of Appeals was entered on December 19, 1968. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Does a federal court have jurisdiction of a suit by a union against a bankrupt employer and the trustee in bankruptcy to enforce a collective bargaining agreement?

2. Where an employer has engaged an insurance company to hold and administer a fund which is to be distributed to employees who become entitled thereto under a collective bargaining agreement, does the federal court have jurisdiction of a suit by a union to compel the insurance company to distribute the fund in accordance with the terms of the collective bargaining agreement?

3. Where an insurance company has been engaged to hold and administer a fund which is to be distributed to employees who become entitled thereto under a collective bargaining agreement, is the distribution of the fund governed solely by the terms of the insurance contract between the employer and the insurance company, or is the collective bargaining agreement also relevant to that determination?

4. Where an employer and an insurance company contract for the latter to hold and administer a fund which is to be distributed to employees who become entitled thereto under a collective bargaining agreement, is enforcement of the insurance contract governed by Section 301 of the Labor Management Relations Act?

5. Does a private action to secure distribution of a fund maintained for the purpose of providing pension benefits to employees who become entitled thereto under a collective bargaining agreement conflict with the jurisdiction of the bankruptcy court over the bankrupt employer?

6. Does a federal court violate the supremacy clause of the Constitution of the United States when it dismisses an action brought under Section 301 of the LMRA on the ground that such lawsuit would interfere with an earlier filed diversity action seeking resolution of the dispute on the basis of state law?

STATUTES INVOLVED

Section 301(a) of the Labor-Management Relations Act, 1947, 29 U.S.C. § 185(a), 61 Stat. 156, provides as follows:

"Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

STATEMENT OF THE CASE[1]

For many years, the employees of Hamilton Steel Products, Inc. (the Employer) were represented by United Steelworkers of America (the Union). In 1956, the Union and the Employer negotiated a pension agreement providing certain pension benefits for the employees, and requiring the Employer to establish and contribute to a fund from which pension benefits would be paid. Two days later, the Employer entered into an insurance contract with the Union Central Life Insurance Company (the Insurance Company) for the purpose of funding and administering the payment of benefits pursuant to the terms of the pension agreement (Vol. I, p. 15; Vol. III, p. 7).[2]

The insurance contract provided that the Employer would made an annual contribution to the Insurance Com-

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[1] Since the case was disposed of below by the granting of a motion to dismiss the complaint, our statement is based principally upon the allegations of the complaint.

[2] The record in the court below consisted of three volumes, the first two of which were incorporated from a prior case described herein. As used herein, "Vol. I" refers to "Appendix to Brief for Appellant" in No. 15,835 below; "Vol. II" refers to "Additional Appendix of Plaintiff, The Union Central Life Insurance Company" in No. 15,835 below; and "Vol. III" refers to "Appendix for Plaintiff Appellant" in No. 16,967 below.

pany, and that these contributions would be accumulated in a deposit fund (Vol. II, pp. 21, 23). It spelled out the bases upon which employees would become entitled to pension benefits and the amounts of such benefits, in language virtually identical to that contained in the pension agreement (Vol. II, pp. 16–19). It provided that the Employer would notify the Insurance Company when an employee became eligible for pension benefits (Vol. II, pp. 15, 20), and that upon receipt of such notification the Insurance Company would withdraw from the fund an amount sufficient to purchase an annuity providing the stipulated benefits for the employee (Vol. II, p. 23).

In subsequent years, the Union and the Employer entered into successive pension agreements continuing in effect the existing pension arrangements, and the Employer continued in effect its insurance contract with the Insurance Company to provide the benefits it promised in the pension agreement (Vol. I, pp. 15-16; Vol. II, pp. 2-10; Vol. III, pp. 6-7).

In 1964, the Employer became insolvent, petitioned for bankruptcy, and failed to make its annual contribution to the Insurance Company. On February 19, 1965, the Employer was adjudicated a bankrupt, and its assets were transferred to Nathan Yorke (the Trustee). (Vol. I, pp. 15-16; Vol. III, p. 8.) The bankruptcy proceeding is still pending.

The fund being held by the Insurance Company contains more than $150,000 (Vol. I, p. 17; Vol. III, p. 8). The Employer having ceased its contributions, the time has come to disburse the fund.

The Insurance Company acknowledges that it is a stakeholder and that it has no right to retain the fund (Vol. I, p. 23; Brief of Insurance Company to the court below, p. 1). A dispute has arisen, however, between the Union and the Trustee as to the proper disbursement of the fund. They are in agreement that a portion of the fund must be used to purchase annuities for certain specified employees, but they are in disagreement as to how the remainder of

the fund (more than $100,000) is to be disbursed (Vol. I, p. 61; Vol. III, pp. 9-10, 13.) The Union contends that the remainder must be disbursed in an appropriate fashion to the remainder of the bargaining unit employees; the Trustee contends that the remainder belongs to the Employer and, accordingly, that it should be paid over to the bankrupt's estate. (*Ibid.*).

This dispute has led to two rounds of litigation, the second of which is the subject of this petition for certiorari.

Round 1: The Interpleader Action

On September 2, 1965, the Insurance Company instituted an interpleader action in the federal district court in Chicago, seeking a judicial determination of how the fund is to be disbursed. (Vol. I, p. 13). It named, as defendants, the Employer, the Trustee, several employees (as representatives of the class of all employees), and certain representatives of the Union. The complaint recited the conflicting claims of the Trustee and the Union as to how the fund should be disbursed (Vol. I, pp. 20, 21), and prayed for a court order construing *the insurance contract* and directing distribution of the fund pursuant to *that contract* (Vol. I, pp. 23-24).

The defendant union representatives moved to have the Union itself substituted as a party defendant (Vol. I, pp. 106-07), explaining that the Union contends that *the pension agreement,* as well as the insurance contract, must be looked to in order to determine the proper distribution of the fund, and that the Union must be a party in order to enforce the pension agreement (Vol. I, pp. 106, 109-10). The court denied the motion (Vol. I, p. 110).

The Union then filed a separate motion to intervene (Vol. I, p. 111), alleging that distribution of the fund was dependent upon an interpretation of the pension agreement, that it wished to compel arbitration of its dispute with the Trustee over the meaning of the pension agreement pur-

suant to Section 301 of the LMRA, but that it could not secure such an order from the court unless and until it was made a party to the action (Vol. I, pp. 111-12). The court denied the Union's motion to intervene, stating that:

> "United Steelworkers of America, AFL-CIO, does not have a valid legal claim under and pursuant to Section 301 of the Labor-Management Relations Act, as amended, which would serve as a basis for intervention in these proceedings." (Vol. I, p. 113).

The Union appealed this ruling to the Court of Appeals for the Seventh Circuit, but the denial of intervention was affirmed, 374 F.2d 820 (7th Cir., 1967), the Court of Appeals stating:

> "[T]he present suit is a diversity action brought by Union Central for relief under the Declaratory Judgment and Interpleader Acts. It is not a suit by anyone for 'violation of contracts between an employer and a labor organization.' Therefore, Section 301(a) of the Labor Management Relations Act does not confer upon the Union the right to intervene in this proceeding. No case permitting a labor union to intervene as a right under Section 301(a) has been brought to our attention, nor has any been discovered during our research. In view of the plain strictures of Rule 24(a)(1) and Section 301(a), we must hold that the Union has no statutory right to intervene in the circumstances of this case. *In contrast, if this were a suit by the Union against a defaulting employer to enforce group rights created by a collective bargaining contract, the requirements of Section 301(a) would be met. . . .* Here the Union's attempted intervention simply does not fall within the terms of that Section, for the dispute does not arise out of a violation of a contract between an employer and a labor organization. Hence Section

301 does not support the Union's motion." (374 F.2d 820, 823; emphasis added.)

The interpleader action is still pending unresolved in the district court, awaiting resolution of the instant action.

Round 2: The Present Action

Having been denied intervention in the interpleader action, but having been told by the Court of Appeals that a suit initiated by the Union to enforce the pension agreement would be entertained, the Union instituted the present action in the same federal district court, naming as defendants the Employer, the Trustee, and the Insurance Company (Vol. III, p. 4). The complaint alleges that the federal court "has original jurisdiction pursuant to 28 U.S.C. Section 1337" and that the "suit arises under Section 301 of the [LMRA]." (Vol. III, p. 4). The Trustee in his answer does not dispute this jurisdictional allegation, contending only that the lawsuit might conflict with the jurisdiction of the bankruptcy court. (Vol. III, p. 12).

The complaint recites, and the Trustee in his answer admits, that the pension agreement required "establishment by the [employer] of a pension trust . . . to fund the [pensions]"; that the Employer entered into the insurance contract "pursuant to and in fulfillment of the aforesaid requirement that it fund the [pensions]; that the Insurance Company holds the fund merely as "a custodian"; that a dispute exists over the rights of the employees to benefits under *the pension agreement;* and that the pension agreement provides for arbitration of the dispute over its meaning. (Vol. III, pp. 7-10, 13).

As relief, the complaint seeks an order compelling the Employer and/or the Trustee to arbitrate with the Union the dispute over the meaning of the pension agreement, an order requiring the Employer and/or the Trustee "to direct the [Insurance Company] to expend and distribute

the proceeds of the Trust Fund to the Bargaining Unit Employees in accordance with their rights and interests under the Pension Agreement . . .," and an order requiring the Insurance Company "to comply with such direction" (Vol. III, p. 11). Additionally, the complaint seeks a declaration of the parties' rights under the insurance contract, and an order requiring the Insurance Company to disburse the fund to those entitled thereto (Vol. III, p. 10).

Unlike the Trustee, the Insurance Company filed no answer. Instead it filed a motion to dismiss on the ground that the denial of intervention to the Union in the interpleader action was res judicata and barred the institution of this new action (Vol. III, pp. 16-17).

The district court, without opinion, granted the motion and dismissed the complaint "as to all defendants," citing the Court of Appeals' decision in the interpleader action (Vol. III, p. 18).

The Court below affirmed. It reasoned as follows:

> "Section 301(a) of the Labor Management Relations Act provides federal jurisdiction of 'Suits for violation of contracts between an employer and a labor organization.' *Our analysis of the present complaint does not show that it is based on any violation of a contract between [the Employer] and the Union.* Instead, in this new lawsuit, the Union is seeking basically the same relief that Union Central is seeking in its interpleader action pending against [the Employer, the Trustee], and various representatives of the Union.
>
> ". . . We think it was within the discretion of the district court to refuse to entertain the Union's Section 301 suit at this late date,[3] for the issues can be properly

[3] The Court's reference to the Union's filing of the 301 action "at this late date" is somewhat mystifying. The Union sought promptly to intervene in the interpleader action, and when intervention was denied it promptly filed the instant action, as the court's opinion acknowledges (404 F.2d at 879). Moreover, no adjudication has yet been made by the district court in the interpleader action.

disposed of in the interpleader and bankruptcy proceedings. The new suit filed by the Union should not be permitted to oust the interpleader and bankruptcy courts of their prior jurisdiction." (404 F.2d 878, 879; emphasis added).

REASONS FOR GRANTING THE WRIT

This case presents a number of important questions concerning the protection of employees' collectively bargained pension and welfare rights. In a nutshell, the Union negotiated a pension agreement providing, *inter alia,* for the establishment of a fund from which pension benefits are to be paid. The time has now come to distribute that fund. The court below has held that the Union may not participate in the judicial proceedings which will determine how the fund is to be distributed and, further, that the terms of the pension agreement are irrelevant to the determination of the proper distribution of the fund. These rulings conflict with every other reported federal court decision in this area.

1. *Federal Court Jurisdiction over the Union's Quest for an Adjudication of Employees' Rights under the Pension Agreement*

The complaint in this action seeks, *inter alia,* a declaration of employees' rights under the pension agreement, an order compelling arbitration of the dispute which exists over the proper interpretation of the pension agreement, and an order requiring the Employer and the trustee in bankruptcy (who stands in the shoes of the bankrupt Employer[4]) to abide by the terms of the pension agreement. The pension agreement is a "contract between an employer and a labor

[4] See, e.g. *Christensen* v. *Felton,* 322 F.2d 323, 327 (9th Cir. 1963); *In re Woodruff,* 272 F.2d 696, 699 (7th Cir. 1959), cert. denied 362 U.S. 940 (1960); *In re Magnus Harmonica Corp.,* 262 F.2d 515, 517 (3rd Cir. 1959); 4 Collier on Bankruptcy 947-48.

organization" within the meaning of Section 301 of the LMRA, yet the court below has ruled that there is no federal jurisdiction over the Union's action. That decision conflicts not only with the literal language of Section 301, but also with an unbroken line of decisions by this Court holding that pension agreements and other collective bargaining agreements are enforceable in federal court. See, e.g., *Textile Workers Union* v. *Lincoln Mills,* 353 U.S. 448 (1957); *Lewis* v. *Benedict Coal Corp.,* 361 U.S. 459, 470 (1960) (pension agreement); *John Wiley & Sons* v. *Livingston,* 376 U.S. 543, 552 (1964) (pension agreement).

The Union's suit to enforce the pension agreement is a run-of-the mill 301 action, and the decision below, holding that it is not, is plainly erroneous. Were it not for the other, more intriguing issues raised by other aspects of the complaint, we would urge this Court summarily to reverse the decision below.

2. Federal Court Jurisdiction over the Union's Quest for an Order Requiring the Insurance Company to Disburse the Fund in Accordance with Employees' Rights under the Pension Agreement

The more interesting jurisdictional issue arises from the Union's joinder of the Insurance Company as an additional party-defendant, and its request for an order requiring the Insurance Company to disburse the fund in accordance with employees' rights under the pension agreement. Does federal jurisdiction extend to this additional aspect of the complaint? The court below held that it does not. The Union contends that it does, for two separate reasons: (1) joinder of the Insurance Company is indispensable to providing appropriate enforcement of the pension agreement, because the fruits of that agreement—the monies which will actually pay the pension benefits—are in the hands of the Insurance Company (on this theory, it is irrelevant whether the separate contract of insurance is itself an agreement

enforceable under Section 301); and (2) the contract of insurance is an ancillary funding agreement negotiated for the purpose of implementing the pension agreement and is itself an agreement enforceable under Section 301.

If either of the Union's contentions is correct, the court below erred in dismissing the Union's action against the Insurance Company. And every other federal court which has faced the question has held, on one ground or the other, that federal jurisdiction extends to the union's claim against the third-party stakeholder. *Connecticut General Life Insurance Co.* v. *Craton,* 405 F.2d 41 (5th Cir., 1968)[5]; *United Automobile Workers* v. *Textron, Inc.,* and *The Union Central Life Insurance Company,* 312 F.2d 688 (6th Cir., 1963) and 359 F.2d 966 (6th Cir., 1966)[6]; *Abruscato* v. *Local 199, Industrial Workers* — F. Supp. —, 69 LRRM 2537 (S.D.N.Y., September 20, 1968),[7] *Bey* v. *Muldoon,*

[5] In *Connecticut General,* the Union sued to enforce both its collective bargaining agreement and the ancillary group insurance policy obtained by the employer from the insurance company. The Court held that it could entertain the Union's claims under the insurance policy "under the doctrine of pendent jurisdiction," 405 F.2d at 48. Accordingly it found it necessary to decide whether jurisdiction over the policy was also conferred by Section 301, noting only that "It may be that the scope of § 301 is sufficiently broad to include within its coverage the declaration of rights under insurance policies which arise out of the collective bargaining process," *Id.*

[6] In the second *Textron* decision, the Court of Appeals remanded with directions that the district court order that the fund (held by the same insurance company as is involved in the instant case) be disbursed in accordance with the terms of the pension agreement, 359 F.2d at 969.

[7] In *Abruscato,* the court sustained 301 jurisdiction over the trustees of the welfare and pension funds on the following reasoning:

> "It is clear that this complaint charges that there has been a violation of a contract 'between an employer and a labor organization representing employees in an industry affecting commerce,' i.e., the collective bargaining agreement of November 15, 1964. The fact that plaintiff's rights arise out of trust indenture creating funds for their benefit does not make their claim any the less a claim for violation of the collective bargaining agreement,

217 F. Supp. 404 (E.D. Pa. 1963)[8]; *Bath* v. *Pixler*, 283 F. Supp. 632 (D. Colo. 1968) (dictum).[9]

The question obviously is one of immense importance to the protection of employees' collectively bargained pension and welfare rights. "It is a commonplace of modern industrial relations for employers to provide security for employees and their families to enable them to meet problems arising from unemployment, illness, old age or death." *Lewis* v. *Benedict Coal Corp.*, 361 U.S. 459, 468 (1960). It has been our experience that all but the largest companies elect to administer these programs through a third-party "stakeholder." The right (or, more accurately, obligation, *Vaca* v. *Sipes*, 386 U.S. 171, 191 (1967)) of the Union to sue for enforcement of employee interests in such programs would be hollow indeed if the court's jurisdiction did not extend to the stakeholder who holds the money from which the benefits must be paid.

This Court should grant certiorari to resolve the conflict among the federal courts on this important jurisdictional question.

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[7] *(continued)*

for the collective bargaining in effect incorporates the trust indentures and makes a violation of the indentures a violation of the agreement." 69 LRRM at 2539.

[8] In *Bey*, the court sustained 301 jurisdiction over the "bank in which the funds are deposited," reasoning that: "If an employer is subject to suit certainly . . . those individuals administering the fund set up pursuant to the contract are logical parties to a suit which will of necessity interpret that contract. To exclude them would frustrate rather than serve the Congressional policy expressed in that section [301]." 217 F. Supp. at 406-07.

[9] "We are persuaded that the *Lincoln Mills* reasoning applied to Section 301 justifies acceptance of jurisdiction for the limited purpose of this suit, namely disposition of locked up funds following completion of the trust purposes." 283 F. Supp. at 635.

3. ***Federal Substantive Law: Is the Pension Agreement Relevant to the Determination of the Proper Distribution of the Fund Held by the Insurance Company? Is the Insurance Contract Enforceable under Section 301?***

Underpinning the jurisdictional questions are two of federal substantive law: (1) is the pension agreement relevant to the determination of the proper distribution of the fund held by the Insurance Company; and (2) is the insurance contract enforceable under Section 301? The court below affirmed dismissal of the complaint because, in its view, the rights of the parties as established in the pension agreement are irrelevant to the proper distribution of the fund held by the Insurance Company, and the insurance contract is not governed by Section 301.

The Insurance Company insists that its insurance contract with the Employer, and only that contract, is relevant in determining how the fund is to be distributed, and that the interpretation of that contract has nothing to do with Section 301:

> "The obligations of a life insurance company with respect to the payment of the proceeds under a contract of insurance issued by it are to be determined solely by the provisions of such contract properly interpreted.
>
> * * *
>
> "The case at bar involves no labor dispute but rather the legal interpretation of an insurance contract." (Brief of the Insurance Company to the court below, pp. 6-7, 8).

The court below agreed with the Insurance Company on both propositions. Its ruling conflicts with principles enunciated by this Court, as well as with decisions of two other courts of appeals. The questions are of vital importance in defining the reach of federal substantive labor law, established under Section 301, to the protection of collectively bargained pension and welfare plans.

We do not quarrel with the proposition that the typical contract of insurance is a commercial contract governed by standard contract law, and that the rights of third-party beneficiaries thereunder also are governed by standard contract law. We contend, however, that there is a specialized class of insurance contracts—those negotiated for the purpose of implementing collective bargaining agreements—which are governed by a different set of rules emanating from Section 301.

We are prepared to prove, in the instant case, that the Insurance Company entered into its contract of insurance with the Employer with full knowledge that its sole purpose was to implement the Employer's promises to the Union contained in the pension agreement, and that it was the intention of both the Employer and the Insurance Company to make the scope of coverage under the insurance contract coterminous with the scope of the promises made by the Employer in the pension agreement. If we are right, we insist that two legal consequences should follow:

1.) The determination of employees' entitlement to benefits should be made under the pension agreement—which provides for an arbitrator's resolution—and not under the ancillary insurance contract which merely echoes the pension agreement's terms but lacks an arbitration provision; and

2.) If the arbitrator sustains the employees' entitlement under the pension agreement, Section 301 requires that the identical interpretation be accorded the insurance contract, and empowers the court to direct the Insurance Company to disburse the fund in accordance with that interpretation.

While this Court has not considered or resolved these precise questions, it has given clear indication that traditional commercial concepts must yield to the federal labor policy implemented in Section 301. In *Lewis* v. *Benedict Coal Corp.*, 361 U.S. 459 (1960), the Court rejected a contention that rights under collectively-bargained pension agree-

ments are governed by traditional "third-party beneficiary" concepts, stating:

> "Our problem is whether we should infer such an intention in this contract because there may be reasons making it appropriate to do so in the generality of third-party beneficiary contracts.
>
> "The collective bargaining agreement, however, is not a typical third-party beneficiary contract."
>
> * * *
>
> "Finally, a consideration which is not present in the case of other third-party beneficiary contracts is the impact of the national labor policy. . . . Thus the national labor policy becomes an important consideration in determining whether the same inferences which might be drawn as to other third-party agreements should be drawn here." 361 U.S. at 468, 470.

Benedict Coal, to be sure, did not involve the interests of a separate corporation (such as the Insurance Company here) which claims that it was not a party to the collective bargaining agreement. But this Court has bridged that gap as well, and has held that privity is not a prerequisite to the attachment of Section 301 responsibilities. In *John Wiley & Sons* v. *Livingston,* 376 U.S. 543 (1964), a new employer was held obligated to arbitrate disputes under his predecessor's collective bargaining agreement, even though he had not agreed to assume his predecessor's liability under that agreement. In rejecting the successor's defense based on non-assumption of the agreement, this Court said:

> "While the principles of law governing ordinary contracts would not bind to a contract an unconsenting successor to a contracting party, a collective bargaining agreement is not an ordinary contract. . . . Central to the peculiar status and function of a collective bargaining agreement is the fact, dictated both by circum-

> stance . . . and by the requirements of the National Labor Relations Act, that it is not in any real sense the simple product of a consensual relationship. Therefore, although the duty to arbitrate . . . must be founded on a contract, the impressive policy considerations favoring arbitration are not wholly overborne by the fact that Wiley did not sign the contract being construed. This case cannot readily be assimilated to the category of those in which there is no contract whatever, or none which is reasonably related to the party sought to be obligated. There was a contract, and Interscience, Wiley's predecessor, was party to it. We thus find Wiley's obligation to arbitrate this dispute in the Interscience contract construed in the context of a national labor policy." (376 U.S. at 550-51).

We believe the attachment of 301 responsibility here is even simpler than in *Wiley*. The Insurance Company undertook to earn a fee by serving as stakeholder of a fund which it knew was being accumulated to provide benefits promised in a collectively bargained pension agreement. It acknowledges that it has no right to the fund, and it has (or should have) no interest in how the fund is to be disbursed. In these circumstances, why shouldn't the fund be disbursed in accordance with an arbitrator's determination of rights *under the pension agreement,* rather than through a judicial construction of the insurance contract's language which was merely copied from the pension agreement? The Employer's promise to arbitrate such questions under the pension agreement will have been meaningless if the arbitrator's determination does not bind the Insurance Company to distribute the fund in accordance therewith.

The court below is alone in holding that the pension agreement is irrelevant to the determination of how the fund is to be distributed. The Courts of Appeals for the Fifth and Sixth Circuits both have reached the contrary result. In *United Automobile Workers* v. *Textron, Inc.*

and The Union Central Life Insurance Company, 312 F. 2d 688 (6th Cir., 1963) and 359 F. 2d 966 (6th Cir., 1966), the facts were substantially identical to the instant case. The union and employer were parties to a pension agreement, and pursuant thereto the employer engaged an insurance company (the same one involved here) as a stakeholder of the fund (312 F. 2d at 689). The plant closed down, and a dispute erupted between the union and the employer as to whether the latter could recapture a portion of the fund or whether it had to be disbursed to the employees. The Sixth Circuit construed *the pension agreement* as entitling the employees to the fund,[10] and it remanded with instructions that an order be entered requiring disbursement of the fund in accordance with that construction. 359 F. 2d at 969. Thus, the rights of the employees were determined *in a 301 action, under the terms of the pension agreement,* and disbursement of the fund in the hands of the insurance company was ordered pursuant thereto.

In *Connecticut General Life Insurance Co.* v. *Craton,* 405 F. 2d 41 (5th Cir., 1968), the union negotiated, with the employer, an agreement for the provision of insurance benefits and it "was understood by the parties that [the employer] would secure insurance in compliance with the terms of this . . . agreement." (405 F. 2d at 44). The employer did so. A dispute later arose as to the appropriateness of a particular deduction which the insurance company was making from insurance payments. The court first concluded that the deduction was not authorized by the *agreement between the union and the employer* (405 F. 2d at 46-68). It then turned to the question whether *the insurance company* could be forbidden to continue the deduction. It concluded that the deduction was not authorized by the insurance policy, relying principally on the concept

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[10] Apparently, the pension agreement did not provide for arbitration of disputes as to its meaning.

that the policy should be read *in pari materia* with the collective bargaining agreement:

> "In the strictest sense [the insurance company] was not a formal party to the terms of the . . . agreement between [the employer and the union], nor are the terms of the . . . clause in the policy identical with the terms set forth in the collective bargaining agreement. *Nevertheless, when the circumstances surrounding the issuance of the insurance policy are given their due weight, including [the employer's] obligation to adhere faithfully to its collective bargaining agreement, we think that the parties must have intended that the terms of the . . . clause in the insurance policy be read in pari materia with the terms of the . . . clause in the collective bargaining agreement.*" (405 F. 2d at 48; emphasis added).

The court went on to note that it "may be that the scope of § 301 is sufficiently broad to include within its coverage the declaration of rights under insurance policies *which arise out of the collective bargaining process*" (405 F. 2d at 48; emphasis added), but concluded that it was unnecessary to decide this question, as it had pendent jurisdiction to interpret the policy because "the claims made under the insurance contract and the collective bargaining agreement originated in a 'common nucleus of operative fact' ". (*Ibid.*)

The present case is important not only because of the conflict of legal reasoning with two other Courts of Appeals, but because the decision below threatens effectively to remove the arbitration process from the resolution of pension and welfare disputes. Of what value is arbitration under a pension agreement, unless the arbitrator's resolution governs the distribution of the pension monies so often in the hands of a third-party stakeholder? We seek a ruling that, where a stakeholder has knowingly contracted to implement the terms of a collective bargaining agreement, he is bound

to comply with an arbitral determination of the meaning of that agreement.

Our view of the importance of this question is shared by the Insurance Company, which advised the court below that our legal position, if accepted, "would have catastrophic effects upon the law of insurance and the insurance industry" (Brief of the Insurance Company to the court below, p. 9). We have no doubt that the ruling would affect the enforcement of tens of thousands of similar stakeholder agreements, although we cannot see how the ruling we seek would have a catastrophic impact upon stakeholders who, after all, are supposed to have no interest in how the funds they hold are distributed.

4. *The "Conflict" Between the Bankruptcy Proceeding and the 301 Action*

The court below stated, as an alternative basis for dismissing the complaint, that the 301 action might conflict with the jurisdiction of the bankruptcy court. This holding raises an important issue of federal substantive law—reconciliation of the respective roles of the Labor Act and the Bankruptcy Act—about which the federal courts are in conflict.

At the moment, the fund is not a part of the bankrupt's estate.[11] If the Union is correct in its contention that all of the fund must be disbursed to employees, it never will become part of the bankrupt's estate. If, however, the Trustee is correct that part of the fund should be returned to the Employer, it would then become part of the estate. The important question is who is to resolve that dispute—the bankruptcy court, or an arbitrator appointed under the terms of the pension agreement?

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[11] "The trustee takes no title to property not belonging to the bankrupt except as permitted by explicit provisions of the Act . . ." 4A Collier on Bankruptcy 84 (14th Ed. 1967).

The Court of Appeals for the Third Circuit has developed a formula for resolving such conflicts which, as applied to the facts of this case, would lead to a result opposite to that of the court below, *Koven & Brothers, Inc.* v. *United Steelworkers of America, AFL-CIO,* 381 F.2d 196 (3rd Cir., 1967):

> "[R]ecent Supreme Court decisions caution that the interpretation of a labor contract containing an arbitration clause is a matter involving considerations 'foreign to the competence of the courts', involving 'sources of law . . . not confined to the express provisions of the contract, as the industrial common law.' Our competence to render appropriate judgments on these contract matters is not enhanced because a bankruptcy matter is also involved. Therefore, if it is feasible to separate bankruptcy questions from contractual questions, the former should be decided by a court, and the proceedings stayed pending arbitral determination of the latter.
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> * * *
>
> "In summary, we hold that questions involving an interpretation of the Bankruptcy Act should be decided by the Court, *while questions involving an interpretation of the collective bargaining agreement should if feasible be decided by the arbitrator,* unless they involve special bankruptcy interests. If such interests are present, then the proper forum should be dictated by the needs of the particular case, and this is a matter best left to the discretion of the trial court." 381 F.2d at 202, 205.

The court explained what it meant by "special bankruptcy interests" by comparing a claim against the general assets of the bankrupt (in which all creditors have an interest) to a claim against a fund in which the bargaining unit employees (but no other creditor of the bankrupt) have an in-

terest. The court stated that the former involves "bankruptcy interests" and would be subject to disposition under the Bankruptcy Act, while the latter clearly does not involve "bankruptcy interests" and therefore should be subject to resolution under the Labor Act. 381 F.2d 202-04. The court concluded that the case before it fell into the latter category, and directed that the dispute be arbitrated.

Applying the reasoning of *Koven,* the present case should be resolved under the Labor Act, not the Bankruptcy Act. The dispute is over distribution of a trust fund in which the employees, but no other creditors, have an interest. The decision below is in direct conflict with *Koven,* and the question is one of general importance which should be resolved by this Court.[12]

5. *The "Conflict" Between the Interpleader Action and the 301 Action*

The Court below gave, as a final reason for affirming dismissal of the complaint, that the 301 action "should not be permitted to oust the interpleader court[] of [its] prior jurisdiction." This holding is at least three-ways startling.

First, the Union does not seek dismissal of the interpleader action, and it does not claim that the 301 action should in any way "oust" the interpleader action. The Union would be delighted to have its 301 action consolidated with the interpleader action; indeed the separate 301 action would never have been instituted but for the earlier refusal to permit the Union to advance its 301 claims in the interpleader action.

Second, concepts of one court "ousting" another's jurisdiction seem rather irrelevant to this litigation. All three proceedings—bankruptcy, interpleader and 301—are pend-

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[12] We note, in passing, that the decision below proves too much. If the Union's 301 action conflicts with the bankruptcy court's jurisdiction, why does not the Insurance Company's interpleader action equally so conflict?

ing in the same district court. The interpleader and 301 actions were before the same district judge. We had thought that archaic pigeonholes were no longer in vogue under the federal rules. We do not understand how Judge Lynch can be in any danger of usurping jurisdiction from himself.

Finally, and most important, the reasoning of the court below has the rather extraordinary effect of reversing the Constitution's supremacy clause. The interpleader action is a diversity action seeking distribution of the fund under state law. In the 301 action, the Union is claiming that federal substantive law, i.e. Section 301, governs disposition of the fund. The court's dismissal of the federal claim on the ground that it would conflict with its implementation of state law in the interpleader action is, so far as we can tell, the first declaration of the supremacy of state over federal law since the ruling of the Maryland Court of Appeals reversed in *McCulloch* v. *Maryland,* 4 Wheat. 316 (1819), and is perhaps the first such declaration ever by a federal court.

CONCLUSION

For the reasons stated, the petition for writ of certiorari should be granted.

Respectfully submitted,

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Appendix 1

IN THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

Name of Presiding Judge, HONORABLE WILLIAM J. LYNCH

Cause No. 67 C 1046—Dated April 11, 1968

Title of Cause

UNITED STEELWORKERS OF AMERICA, AFL-CIO

VS.

HAMILTON STEEL PRODUCTS, INC.

Order Motion of the defendant Union Central Life Insurance Company to dismiss the complaint is granted and the complaint is dismissed as to all defendants. See *Union Central Life Insurance Company* v. *Hamilton Steel Products,* 374 F. 2nd 820.

Appendix 2

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

SEPTEMBER TERM, 1968—SEPTEMBER SESSION, 1968

No. 16957

UNITED STEELWORKERS OF AMERICA, AFL-CIO,
Plaintiff-Appellant,

v.

HAMILTON STEEL PRODUCTS, INC., NATHAN YORKE AND THE UNION CENTRAL LIFE INSURANCE COMPANY,
Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

December 19, 1968

Before HASTINGS, KILEY, and CUMMINGS, *Circuit Judges.*

PER CURIAM. In a prior phase of this litigation, we held that Section 301(a) of the Labor Management Relations Act (29 U.S.C. § 185(a) did not confer upon the United Steelworkers of America ("Union") the right to intervene in a declaratory judgment and interpleader action brought by Union Central Life Insurance Company ("Union Central") with respect to an insurance policy issued to Hamilton Steel Products, Inc. ("Hamilton"). See 374 F. 2d 820. Shortly after the promulgation of that opinion, the Union filed its own suit, purportedly based on Section 301(a) of the Labor Management Relations Act and on the Federal Declaratory Judgment Act, seeking appropriate distribution of the pro-

ceeds of the policy which Hamilton had purchased from Union Central. The defendants in the new action were Hamilton, which had been adjudicated a bankrupt in 1965, Nathan Yorke, Hamilton's bankruptcy trustee to whom its assets had been transferred, and Union Central. These defendants were among the parties in the prior interpleader action filed by Union Central and not yet terminated.

The district court granted Union Central's motion to dismiss. We affirm.

Section 301(a) of the Labor Management Relations Act provides federal jurisdiction of "Suits for violation of contracts between an employer and a labor organization." Our analysis of the present complaint does not show that it is based on any violation of a contract between Hamilton and the Union. Instead, in this new lawsuit, the Union is seeking basically the same relief that Union Central is seeking in its interpleader action pending against Hamilton, Nathan Yorke, and various representatives of the Union.

The bankruptcy trustee has pointed out that jurisdiction of the Union's lawsuit might "conflict with the jurisdiction over your respondent [the bankruptcy trustee] and the assets of Hamilton Steel Products, Inc. ("Hamilton") vested in this court, sitting in bankruptcy in Case No. 64-B-1072." The trustee has also advised that in the interpleader action brought by Union Central, he is claiming certain of the funds held by Union Central under its insurance policy with Hamilton, on the ground that they are assets of the bankruptcy estate. We think it was within the discretion of the district court to refuse to entertain the Union's Section 301 suit at this late date, for the issues can be properly disposed of in the interpleader and bankruptcy proceedings. The new suit filed by the Union should not be permitted to oust the interpleader and bankruptcy courts of their prior jurisdiction. See *In re Muskegon Motor Specialties Co.*, 313 F. 2d 841 (6th Cir., 1963), certiorari denied, 375 U.S. 832.

The judgment is affirmed.